

### **REMARKS**

The above claim amendment and the following remarks are submitted to be fully responsive to the pending Office Action. It is further submitted that this response is timely filed within the shortened-statutory period of time. In light of the following discussion and the above amendment, reconsideration of all grounds of rejection and allowance of all claims are respectfully requested.

#### **Obviousness Type Double Patenting**

Two provisional obviousness type double patenting rejections have been presented.

With regard to the first of the provisional rejections, Applicant offers to submit an appropriate terminal disclaimer with respect to the claims of US Patent Nos. 6,908,593; 6,521,182; and 6,261,519 upon an indication of allowable subject matter by the Examiner in the present application.

With regard to the second of the provisional rejections, Applicant will address the rejection over the four pending applications once the rejection is no longer a provisional rejection or upon allowance of the present claims over the other rejections, whichever comes first.

#### **Claim Objection**

Claim 40 has been amended to make it depend only on claim 22. It is submitted that this amendment overcomes the Examiner's objection to claim 40.

#### **Rejection Under 35 USC 102(e)**

Claims 22-39 and 41-45 have been rejected under 35 USC 102(e) over the Naka et.al references (hereinafter Naka). Applicant traverses this rejection and submits that Naka fails to teach all of the elements of the claimed invention.

Naka discloses a device for analyzing a sample. The device can be used in analytical chemistry, including the medical field. The device has an opening for receiving a sample, an analytical portion comprising one or more analytical sections, a channel for transporting the sample from the port to the analytical section(s), and a suction pressure generating means for drawing the sample from the port through the channel to the analytical section(s). An optional

bypass channel may be included. The presence of multiple analytical sections is disclosed at, for example, Figures 2, 7, 12-15 and 21. Naka does not disclose a stop junction.

The examiner argues that Figure 21 of Naka discloses a first measurement area (3a), a first channel that traverses the length of the device, a compressible bladder (1) and a stop junction (3d) that prevents the sample from flowing into the bladder. The element identified as 3d in Figure 21 of Naka is not a stop junction.

Figure 21 is discussed in Naka at column 30, line 6 through column 31, line 3 of either of the US Patents. Similar language is present in the EP reference. That disclosure states that the analytical portion of the Naka device has four analytical sections, i.e., 3a, 3b, 3c and 3d. With respect to analytical section 3d, the Examiner's is directed to lines 44-45 where Naka states that "Furthermore, at this time, the rinsing solution 16 is moved into the **analytical section 3d.**" (Emphasis added.)

While this is a clear statement that 3d is one of four analytical sections and not a stop junction, Naka also clearly teaches that at no time does a sample to be tested ever reach analytical section 3d. In fact, the sample never passes beyond analytical section 3b. See column 30, lines 23-65 and Figures 21B-21H. This clearly teaches that the sample only passes between analytical sections 3a and 3b. Thus, analytical section 3d is not a stop junction as it does not stop the sample from entering the bladder.

Because Naka does not disclose a stop junction, it fails to teach all of the elements of Applicant's claims. Accordingly, it fails to support the rejection under 35 USC 102(e).

### **The Rejection Under 35 USC 103(a)**

Claims 38-39 have been rejected under 35 USC 103(a) over Naka. It is the Examiner's position that Naka teaches all of the elements of the claims except for the use of a polysulfone anisotropic filter. Applicant traverses this rejection.

As noted above, Naka does not teach all of the elements of the claims as it fails to teach the presence of a stop junction. As a result, Naka not only fails to teach the use of a polysulfone anisotropic filter, it fails to teach the use of a stop junction.

Naka also fails to teach the combination of a device that employs a stop function and a bypass channel. Consequently, even if one were to add a polysulfone anisotropic filter to the

structure of Naka, one would not get the claimed invention. Accordingly, Naka fails to support the rejection of claims 38-39 under 35 USC 103(a).

**Conclusion**

In light of the foregoing arguments and amendment, it is submitted that all of the grounds of rejection have been overcome and that the present claims are now in condition for allowance. If the Examiner deems that any issue remains after consideration of this Response, he is invited to call the undersigned and expedite any remaining prosecution.

Respectfully Submitted,

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